

REMARKS

Claims 43-74 are pending in the present application.

Claims 1-42 have been previously canceled without *prejudice*.

Claims 43-48, 50-56, 58-64, 66-72 and 74 stand rejected under 35 U.S.C. § 103(a) over EP 425,405 A2 to James et al. (“*James*”) in view of U.S. Patent No. 5,459,656 to Fields et al. (“*Fields*”) and “The keys to the enterprise: integrated applications drive information systems to new horizons – enterprise wide integration” to Dusty Rhodes (“*Rhodes*”).

Claims 49, 57, 65, and 73 stand rejected under 35 U.S.C. § 103(a) over *James* in view of *Fields*, and *Rhodes* and in further view of “Dun & Bradstreet Software Delivers Sales and Promotion System to Manufacturers” to Frank O. Smith (“*Smith*”).

Applicants initially note that this Supplemental Response is submitted in response from a Telephone call from Examiner John Pauls on November 27, 2012 and after a Request for Continued Examination (RCE) of June 14, 2012. Applicants further note with thanks that Examiner Pauls indicated that Applicants claims would be allowable if amended to overcome informalities. Applicants respectfully submit that the amendment to the claims herewith (please note that the claims as amended herewith are made as if the amendments in the RCE of June 14, 2012 have been entered) is not necessitated by any prior art and is unrelated to the patentability of the present invention

Applicant respectfully submits that all of Applicant’s arguments and amendments are without prejudice or disclaimer. In addition, Applicant has merely discussed example distinctions from the cited prior art. Other distinctions may exist, and as such, Applicant reserves the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. Applicant further respectfully submits that by not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner’s additional statements. The example distinctions discussed by Applicant are considered sufficient to overcome the Examiner’s rejections. In addition, Applicant reserves the right to pursue broader

claims in this Application or through a continuation patent application. No new matter has been added.

I. Support for Current Claim Amendments

In compliance with 35 U.S.C. § 112, Applicant respectfully submits that support for Applicant's current claim amendments may be found in at least Pg. 15, ln 4-pg. 16, ln 25 "Allocations to Sellers" and FIG. 4.

II. Rejections under 35 U.S.C. § 103(a):

Claims 43-48, 50-56, 58-64, 66-72 and 74 stand rejected under 35 U.S.C. § 103(a) over *James* in view of *Fields* and *Rhodes*. Claims 49, 57, 65, and 73 stand rejected under 35 U.S.C. § 103(a) over *James* in view of *Fields* and *Rhodes* and in further view of *Smith*.

Applicant respectfully submits that Claims 43-74 in their current form contain unique and novel limitations that are not taught, suggested, or even hinted at in *James*, *Fields*, *Rhodes*, or *Smith*, either individually or in combination. In fact, Thus, Applicant respectfully traverses the Examiners obvious rejection of Claims 43-74 under 35 U.S.C. § 103(a) over the proposed combination of *James*, *Fields*, *Rhodes*, or *Smith*, either individually or in combination.

By way of example, these references fail to teach or suggest at least the following limitations:

(a) a hierarchy of seller models which comprise a parent seller and at least two sub-sellers associated with the parent seller;

(b) a processor coupled with the memory, wherein the processor:

computes an amount of the product that is ATP at the at least one seller represented by a seller model according to, at least, planned supply of the product, one or more customer orders for the product through one or more sellers represented by at least one of the seller models, a pre-allocated supply of the product to the at least one seller represented by a seller model, and an amount of the product that is ATP at one or more sellers within the hierarchy of sellers;

adjusts the pre-allocated supply of the product to the at least one seller represented by a seller model according to customer orders across a time

horizon and recomputes the amount of the product that is ATP at the at least one seller represented by a seller model according to the adjusted pre-allocated supply.

and

- (c) *two or more of the at least two sub-sellers associated with the parent seller do not commit to sell an amount of the product included in the sales forecasted by the parent seller; and*
(the invention) requires a sub-seller of the two or more of the at least two sub-sellers to be ATP at the parent seller prior to authorizing the portion of the product to be promised by the sub-seller.

Regarding limitation (a) above, the Examiner has merely cited “Pages 4-5” of *Rhodes*. Specifically the Examiner states:

The combination of James in view of Fields does not teach nor suggest a hierarchy of seller models which comprise a parent seller and at least two sub-sellers associated with the parent seller, however, these features are taught by Rhodes (Text Version of the document of Rhodes-NPL: **Pages 4-5**).

(March 14, 2012 Office Action, page 3) (Emphasis added). Applicant respectfully disagrees. Nowhere in the entire text of *Rhodes* is a reference made to a parent seller or a sub-seller. The only reference to a “hierarchical” term in *Rhodes* is “these technologies move the entire system structure from a hierarchical, central process model to a distributed cooperative processing model.” However, a mere reference to a general hierarchical term clearly does not disclose the particularities of a “**hierarchy of seller models which comprise a parent seller and at least two sub-sellers associated with the parent seller.**” Therefore, *Rhodes* fails to disclose this aspect.

However, if the Examiner maintains that pages 4-5 of *Rhodes* somehow inherently discloses “a hierarchy of seller models which comprise a parent seller and at least two sub-sellers associated with the parent seller,” Applicant respectfully requests that the Examiner “properly communicate the basis for the rejection so that . . . the Applicants can be given fair opportunity to reply” (see MPEP § 706.02(j)). Merely stating (i.e., **Pages 4-5**) that the limitation at hand is disclosed in pages 4-5 does not afford the Applicant’s a fair opportunity to reply because the Applicant cannot even discern what aspects of *Rhodes* the Examiner asserts disclose the

limitation at hand. Even so, having thoroughly reviewed the entire *Rhodes* reference, Applicant respectfully submits that it does not disclose limitation (a).

Regarding limitation (b) above, the Examiner merely states that *Rhodes* teaches these limitations. Having thoroughly reviewed the entire *Rhodes* reference, Applicant respectfully submits that it does not disclose limitation (b). For convenience, Applicant has provided the text of the entire cited *Rhodes* article below:

The quest for enterprise-wide integration seems daunting when viewed in its totality, taking in all the multiple levels and layers of integration and permutations of options commercially available today. How to make sense of it can be more than a full-time job, not to mention a growth industry for system integrators.

To many people charged with the performance and profitability of a company, it is viewed akin to magic--they want integrated information systems to "work," but they don't want to be burdened unnecessarily with understanding how they work. The complexity of these systems is a major cause for the push for standards: in networks and communications protocols, hardware and devices, and in software.

In the mix of technologies that comprise an enterprise system, applications software is a component where perceived value is most easily understood, particularly regarding achievement of business goals: improved customer service, increased productivity, greater profitability. Application systems help individuals carry out their responsibilities: CEOs and accounts understand the purpose and utility of general ledger systems; sales and marketing knows the importance of good forecasting systems; and production managers appreciate production scheduling systems.

All Together Now

WHAT MANY PEOPLE in these functionally-separate areas are only now coming to appreciate is the power of these applications when they are integrated. For example, within the framework of a comprehensive sales and operations planning (SOP) solution, information resident in a manufacturing system can be leveraged for use in distribution planning or order management systems. With this level of integration, the true value of enterprise-wide integration--to improve the competitive fitness of the company--is greatly advanced.

Sales and operations planning software is a prime example of an area where integration links between specific functions in various departmental disciplines can address global objectives. The mission of SOP, from a business perspective, is:

- * To set overall level of manufacturing output.
- * To better satisfy the current planned level of sales.
- * To boldly meet general business objectives. This includes inventory balancing, work force scheduling, productivity, profitability and overall competitiveness.

To be effective, SOP must include input and cooperation from marketing, manufacturing, materials, finance and engineering: In short, it demands enterprise-wide integration of the most fundamental kind.

The Technical Challenge

APPLICATION SOFTWARE VENDORS face a two-fold task in designing and building a set of integrated systems capable of furnishing a sophisticated solution. An integrated solution like SOP has both a technological design aspect and a business application aspect. Our emphasis here is primarily on business applications, but let's touch quickly on how the technology is coordinated. The importance of this aspect cannot be underestimated.

The application supplier wants to ensure application connectivity at the most primary level: the logic applications systems use to handle and solve business problems. This is to ensure uniformity in the way the software interprets the business problem, handles inputs and outputs, and processes the information anywhere on the enterprise-wide, client-server network.

There are numerous areas where application commonality is a critical issue. Field size, data definition and timing are just three key areas. If field size for part numbers, for example, is inconsistent between systems, it is easy to appreciate the confusion that will result when numbers passing from one system to another are truncated.

Data definition problems arise where different application systems define similar elements differently. For example, consider "balance on hand," a common data element in most manufacturing systems. One system may routinely define it in terms of net units; another, only gross figures. The likely result when you try to fill an order with mismatched systems: some extremely unhappy customers who won't get their shipments when they are expected.

Timing issues are also critical when linking systems. Consider journal entries to the general ledger, for example. If in one application system a certain entry is posted only at month end, but in another, it is posted real time, again, confusion reigns. With simple examples such as these, it becomes apparent that compatible system design is critical in building systems for enterprise-wide service.

Forecasting: The Binding Tie

THE PRIMARY OBJECTIVE of the SOP process is to link sales and marketing strategies to material and resource scheduling in both purchasing and production. In this process, forecasting is the cornerstone upon which accurate and valid plans are laid. Distribution resource planning (DRP) is the tool used by distribution management to plan and control the flow of goods from the source, through the distribution network, to the customer.

In an integrated SOP environment, both forecasting and DRP are used to drive purchasing and the master production schedule (MPS) in manufacturing. MPS linked with order management closes the information loop such that when a customer calls to place an order, the order department can "look" into the manufacturing system to determine what's currently in production to give viable available-to-promise dates. Accurate historical data on customer orders in order management also gets fed back into the forecasting system, where the process starts all over again.

Decisions regarding profitability and productivity reach into all areas of the business, but with an integrated enterprise solution, all the data can come together in a comprehensive fashion in order that decisions can be made in a timely manner. The integration between systems is the means by which information in one system is leveraged to have value in another system. At the same time, the power of the decision support capabilities within each individual component in an SOP solution is not compromised, either. Each separate application system provides management in that area with powerful tools to do its job.

Within forecasting there are the means to evaluate alternative' strategies; to introduce extrinsic factors into the forecasting process; and to measure performance and identify exception conditions. In DRP, are the means to improve the planning and scheduling of an organization's distribution inventory; to provide a coordinated inventory replenishment plan; to improve inventory performance measurements; and to help determine the most cost-effective means of shipment of goods.

In MPS, functions include the ability to accurately schedule supply to meet demand within resource limits in an ever-changing environment, while attempting to achieve management's goals for inventory, customer service objectives, and manufacturing efficiencies.

The Next Frontier

ENTERPRISE-WIDE INTEGRATION is a quest worth the investment, one that early implementers are finding promising returns in terms of improved customer service, reduced costs, and strengthened competitive stance in the market. Integrated application software, like an integrated sales and operations planning solution, can play a dynamic role in competitive resourcefulness of a company. When systems are linked together, the power of such a solution provides benefit to the entire enterprise. It is clearly a case of the sum being greater than the parts. In business, that's what the bottom line is all about.

Dusty Rhodes is director of marketing and planning for Dun & Bradstreet in Atlanta, GA.

Applicant respectfully disagrees that *Rhodes* discloses:

a processor coupled with the memory, wherein the processor:

computes an amount of the product that is ATP at the at least one seller represented by a seller model according to, at least, planned supply of the product, one or more customer orders for the product through one or more sellers represented by at least one of the seller models, a pre-allocated supply of the product to the at least one seller represented by a seller model, and an amount of the product that is ATP at one or more sellers within the hierarchy of sellers;

adjusts the pre-allocated supply of the product to the at least one seller represented by a seller model according to customer orders across a time horizon and recomputes the amount of the product that is ATP at the at least one seller represented by a seller model according to the adjusted pre-allocated supply.

For example, Applicant has found nothing in *Rhodes* that that may be understood to disclose a processor that computes an amount of product that is ATP at the at least one seller represented by a seller model, as recited in claim 43. Furthermore, even if *Rhodes* may be found to make such a disclosure, which Applicant does not concede, Applicant has found nothing in *Rhodes* that relates the above recitation to *each* of the follower aspects: planned supply of the product, one or more customer orders for the product through one or more sellers represented by

at least one of the seller models, a pre-allocated supply of the product to the at least one seller represented by a seller model, and an amount of the product that is ATP at one or more sellers within the hierarchy of sellers.

Furthermore, even if *Rhodes* may be found to make the disclosures referenced in the above paragraph, which Applicant does not concede, Applicant has found nothing in *Rhodes* that relates to a processor that adjusts the pre-allocated supply of the product to the at least one seller represented by a seller model, as recited in claim 43. In addition, even if such a disclosure is found in *Rhodes*, which Applicant again does not concede, Applicant has found nothing in *Rhodes* that associates this previous aspect with customer orders across a time horizon and recomputes the amount of the product that is ATP at the at least one seller represented by a seller model according to the adjusted pre-allocated supply.

If the Examiner maintains that *Rhodes* discloses (b), Applicant respectfully requests that the Examiner “properly communicate the basis for the rejection so that . . . the Applicants can be given fair opportunity to reply” (see MPEP § 706.02(j)). In particular, Applicant respectfully requests the Examiner provide detailed reasoning as to how *Rhodes* discloses each aspect of claim 43 referenced above. Merely stating that the limitation at hand is disclosed in *Rhodes* does not afford Applicant a fair opportunity to reply because Applicant cannot even discern what aspects of *Rhodes* the Examiner asserts disclose the limitation at hand. Nonetheless, having thoroughly reviewed the entire *Rhodes* reference, Applicant respectfully submits that it does not disclose limitation (b). As is evident in the entirety of the above citation of *Rhodes*, this reference fails to provide the necessary disclosures.

Regarding limitation (c), ***the Examiner has failed to address all previous amendments made for purposes of clarification to these limitations.*** Therefore, Applicant respectfully submits that this rejection is moot. However, Applicant respectfully submits that *James* fails to disclose this limitation, even inherently, in either its amended or unamended form. The Examiner states:

The combined teachings of *James* in view of *Fields* in view of *Rhodes* do not teach nor suggest these features, however, the Office takes the position that these features are inherent in the concept of available to promise disclosed by *James* (Page 5, Col. 2, Ln. 32-49):

two or more of the at least two sub-sellers associated with the parent seller do not commit to sell an amount of the product included in the sales forecasted by the parent seller; and

(the invention) requires a sub-seller of the at least two sub-sellers not represented by a seller model to reserve at least a portion of the product calculated to be ATP at the parent seller prior to authorizing the portion of the product to be promised by the sub-seller.

(March 14, 2012 Office Action, page 4). Applicant thanks the Examiner for providing a corrected reference to James (Page 5, Col. 2, Ln. 32-49) but nonetheless maintain that the reference cited by the Examiner does not inherently disclose these features, nor does Examiner provide any reason explaining why these features are inherent. Applicant provides Page 5, Col.2 Ln. 32-49 of *James*, for convenience:

Referring now to the drawings, and more particularly to Figure 1, there is a flow chart showing the processes that take place in a typical manufacturing environment from the time the orders are received and the logic to arrive at the capability to promise and confirm planned shipping dates based on capacity constraints and product availability. Blocks 10, 20, and 30 are functions currently performed by the COS (Customer Order Servicing) module within COPICS where customer orders are received, entered and checked for inventory availability, respectively. In decision block 40, a test is made to verify that the inventory is available or on-hand. If inventory is available, the inventory is allocated to the customer in function block 50, and the customer is advised accordingly, as indicated by operation block 60. This function is also described in the COS module within COPICS.

Nowhere in this passage is there any inherent disclosure “to reserve at least a portion of the product calculated to be ATP,” as recited in claim 43. Applicant notes that a verification that the inventory is available or on-hand does not disclose “reserve at least a portion of the product calculated to be ATP.” Verify typically means “to prove the truth of, as by evidence or testimony; confirm; substantiate” (see <http://dictionary.reference.com/browse/verify?s=t>). In contrast, reserve typically means “to keep back or save for future use, disposal, treatment, etc.” (see <http://dictionary.reference.com/browse/reserve?s=t>). A person having skill in the art would not use these words interchangeably because the words have two very different meanings.

Applicant further notes that inventory allocated to the customer does not disclose “reserve at least a portion of the product calculated to be ATP.” Allocate typically means “to set apart for a particular purpose” (see <http://dictionary.reference.com/browse/allocate?s=t>). Again, reserve typically means “to keep back or save for future use, disposal, treatment, etc.” (see

<http://dictionary.reference.com/browse/reserve?s=t>). A person having skill in the art would not use these words interchangeable because the words have two different meanings. Furthermore, even if allocation and reservation are found similar, Applicant notes that *James* does not disclose “allocate at least a portion of the product calculated to be ATP.” Rather, *James* merely discloses that if inventory happens to be available (**not calculated to be ATP**), then the inventory is allocated. Therefore, *James* does not disclose this aspect of claim 43.

Furthermore, there is no inherent reference to a sub-seller . . . not represented by a seller model,” as further recited in claim 43. The Examiner has failed to address the claim amendments previously presented, merely stating:

This cited portion of the James reference (Page 5, Col. 2, Ln. 32-49) discusses the concept of available to promise wherein sub-sellers commit to sell an amount of sales forecasted by the parent seller. Therefore, being available to promise means that a sub-seller is required to reserve at least a portion of the product calculated to be ATP (available to promise) at the parent seller prior to authorizing the portion of the product to be promised by the sub-seller otherwise the sub-seller could not fulfill its promise via ATP to its parent seller (see March 14, 2012 Office Action, page 12).

Applicant respectfully disagrees with the Examiner’s assertions. The cited portion of *James* does not discuss “the concept of available to promise wherein sub-sellers commit to sell an amount of sales forecasted by the parent seller.” Applicant has reviewed not only the cited portion of *James*, but also the entirety of *James* and found no teachings or disclosures that discuss sub-sellers committing to sell an amount of sales forecasted by the parent seller.

In particular, the cited portion of *James* merely states what happens in a typical manufacturing environment *when the inventory is available* (“If inventory is available, the inventory is allocated to the customer in function block 50, and the customer is advised accordingly, as indicated by operation block 60.”). Applicant again notes that the term “allocate” typically means “to set apart for a particular purpose” (see <http://dictionary.reference.com/browse/allocate?s=t>). In contrast, commit typically means “to give in trust or charge; consign” (see <http://dictionary.reference.com/browse/commit?s=t>). Clearly allocate and commit have different meanings, and thus it may not be stated that *James*

inherently discloses or even touches upon the concept of sub-sellers committing to sell an amount of sales forecasted by the parent seller.

If the Examiner disagrees, Applicant kindly reminds the Examiner of the Examiner's duty to "to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply" (MPEP § 706.02(j)). As presently presented, the Examiner's cursory statement that *James* "discusses the concept of available to promise wherein sub-sellers commit to sell an amount of sales forecasted by the parent seller" does not satisfy a properly communicated basis for a rejection, thus allowing Applicant to identify the issue and fairly reply. Applicant respectfully maintains that the reason that the Examiner cannot identify the issues is because *James* does not inherently disclose the features at issue in Claim 43.

For example, *James* does not inherently disclose "***sub-sellers associated with the parent seller.***" If the Examiner maintains that such a disclosure is inherent, Applicant respectfully requests the Examiner properly communicate how "***sub-sellers associated with the parent seller.***" is inherently disclosed by *James*. Simply stated *James* does not teach, suggest or even hint at this limitation, nor has the Examiner provided any basis, let alone point to any portion *James*, nor responded to Applicant's request to properly communicate how "***sub-sellers associated with the parent seller.***" is inherently disclosed by *James*.

Furthermore, even if *James* inherently discloses "***sub-sellers associated with the parent seller,***" which Applicant does not concede, *James* does not inherently disclose that the sub-sellers "***do not commit to sell an amount of the product included in the sales forecasted by the parent seller.***" If the Examiner maintains that such a disclosure is inherent, Applicant respectfully requests the Examiner properly communicate how sub-sellers "***do not commit to sell an amount of the product included in the sales forecasted by the parent seller.***" is inherently disclosed in *James*. Simply stated *James* does not teach, suggest or even hint at this limitation, nor has the Examiner provided any basis, let alone point to any portion *James*, nor responded to Applicant's request to properly communicate how "***do not commit to sell an amount of the product included in the sales forecasted by the parent seller.***" is inherently disclosed by *James*.

Likewise, even if *James* inherently discloses “**sub-sellers associated with the parent seller**,” which Applicant does not concede, *James* does not inherently disclose **a processor that requires a sub-seller “to reserve at least a portion of the product calculated to be ATP at the parent seller prior.”** Examiner states that “being available to promise means that a sub-seller is required to reserve at least a portion of the product calculated to be ATP at the parent seller prior to authorizing the portion of the product to be promised by the sub-seller otherwise the sub-seller could not fulfill its promise via ATP to its parent seller.” Applicant respectfully disagrees. Just because product is available to promise does not, among other things, **require** a sub-seller to reserve a portion of the product before the processor **authorizes** the portion of the product to be promised. Such a requirement is not inherent. For example, if product is available for promising, a sub-seller may make a request for product available to promise and the processor may authorize such a request **without** requiring the sub-seller to have previously **reserved** the requested product ATP. For at least this reason, *James* does not inherently disclose a processor that **requires** a sub-seller “**to reserve at least a portion of the product calculated to be ATP at the parent seller prior.**”

Still likewise, even if *James* inherently discloses “**sub-sellers associated with the parent seller**,” which Applicant does not concede, *James* does not inherently disclose that **the sub-seller making the reservation is not represented by a seller model**. If the Examiner maintains that such a disclosure is inherent, Applicant respectfully requests that the Examiner properly communicate how sub-sellers making the reservation is not represented by a seller model is inherently disclosed in *James*. Simply stated *James* does not teach, suggest or even hint at this limitation, nor has the Examiner provided any basis, let alone point to any portion *James*, nor responded to Applicant’s request to properly communicate how **the sub-seller making the reservation is not represented by a seller model** is inherently disclosed by *James*.

As illustrated with particularity above, there is no inherent disclosure of these limitations found anywhere in *James* and the Examiner has failed to provide any support for the Examiner’s sweeping generalizations. Therefore, the claims are not rendered obvious over the proposed combination of *James*, *Fields*, and *Rhodes*, and are therefore in condition for allowance. If the Examiner maintains this rejection, **Applicant again respectfully requests that the Examiner adequately support the rejection by providing reasons why the limitations are inherent and**

what parts of the cited reference support those reasons, thus affording Applicant a required right to “fair opportunity to reply.”

For at least the above reasons, Applicant respectfully submits that the claims are not rendered obvious over the proposed combination of *James*, *Fields*, and *Rhodes*

III. The Examiner’s Bare Bones Rejections under 35 U.S.C. § 103(a) are Improper

In rejecting Claim 43, the Examiner states the following:

The combination of *James* in view of *Fields* does not teach nor suggest a hierarchy of seller models which comprise a parent seller and at least two sub-sellers associated with the parent seller; *however, these features are taught by Rhodes* (Text Version of the document of *Rhodes-NPL: Pages 4-5*). *Rhodes also teaches a processor coupled with the memory, wherein the processor:*

computes an amount of the product that is ATP at the at least one seller represented by a seller model according to, at least, planned supply of the product, one or more customer orders for the product through one or more sellers represented by at least one of the seller models, a pre-allocated supply of the product to the at least one seller represented by a seller model, and an amount of the product that is ATP at one or more sellers within the hierarchy of sellers;

adjusts the pre-allocated supply of the product to the at least one seller represented by a seller model according to customer orders across a time horizon and recomputes the amount of the product that is ATP at the at least one seller represented by a seller model according to the adjusted pre-allocated supply.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined teachings of *James* in view of *Fields* with these aforementioned features from *Rhodes* with the motivation of having a means of allowing access to relevant data, facilitating fast decision making and providing material and resource management information to sales and marketing teams (Text Version of the document of *Rhodes NPL-Page 4-Abstract*).

The combined teachings of *James* in view of *Fields* in view of *Rhodes* do not teach nor suggest these features, however, *the Office takes the position that these features are inherent in the concept of available to promise disclosed by James (Col. 2, Ln. 32-49):*

two or more of the at least two sub-sellers associated with the parent seller do not commit to sell an amount of the product included in the sales forecasted by the parent seller; and

(the invention) requires a sub-seller of the two or more of the at least two sub-sellers to be ATP at the parent seller prior to authorizing the portion of the product to be promised by the sub-seller.

(March 14, 2012 Office Action, pages 3-4). Applicant respectfully submits that these rejections are improper under 35 U.S.C. § 103(a) over the proposed combination of *James, Fields, and Rhodes*, either individually or in combination, because *inter alia* **the Examiner's initial burden of proof has not been satisfied**. In addition, Applicant respectfully traverses the rejection of Claims 43-74 because the Examiner has not properly complied with MPEP § 706.02(j), a portion of which is provided below for convenience:

"After indicating that the rejection is under 35 U.S.C. 103, the examiner should set forth in the Office action:

(A) the relevant teachings of the prior art relied upon, preferably with *reference to the relevant column or page number(s) and line number(s) where appropriate*,

(B) the difference or *differences in the claim over the applied reference(s)*.

(C) the *proposed modification of the applied reference(s)* necessary to arrive at the claimed subject matter, and

(D) an *explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made* (MPEP § 706.02(j)). (Emphasis Added).

For example, the Examiner has not set forth: (1) the relevant teachings of *Rhodes* including any references to the relevant column or page and line numbers of *Rhodes*, *merely alleging "these features are taught by Rhodes (Text Version of the document of Rhodes-NPL: Pages 4-5)"* and *"Rhodes also teaches [~11 lines of claim language]" is clearly insufficient* (2) asserted any argument or remarks regarding the differences in Applicant's claims over *Rhodes*; (3) asserted any proposed modifications of *Rhodes* to arrive at Applicant's claimed invention; or (4) asserted any explanation why one of ordinary skill would have been motivated to make the proposed modifications. (March 14, 2012 Office Action, pages 3-4). (Emphasis added).

Furthermore, the MPEP states that "it is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply." (MPEP § 706.02(j)). Thus, if the Examiner continues to maintain these rejections to under 35 U.S.C. § 103(a) based on the proposed combination of

James, Fields, and Rhodes, *Applicant respectfully requests that the Examiner provide a proper argument in support of the Examiner's rejection, as necessitated by MPEP § 706.02(j).*

For at least the reasons set forth herein, Applicant respectfully requests that the rejection of Claims 43-74 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

IV. Applicant's Claims are Patentable over the Proposed James-Fields-Rhodes-Smith Combination

Applicant respectfully submits that Claim 43 is considered patentably distinguishable over the proposed combination of *James, Fields, Rhodes, or Smith*. This being the case, Claims 51, 59, and 67 are also considered patentably distinguishable over the proposed combination of *James, Fields, Rhodes, or Smith*, for at least the reasons discussed above in connection with Claim 43.

Furthermore, with respect to dependent Claims 44-50, 52-58, 60-66, and 68-74; Claims 44-50 depend from Claim 43; Claims 52-58 depend from Claim 51; Claims 60-66 depend from Claim 59; and Claims 68-74 depend from Claim 67. As mentioned above, each of Claims 43, 51, 59, and 67 are considered patentably distinguishable over *James, Fields, Rhodes, or Smith*. Thus, dependent Claims 44-50, 52-58, 60-66, and 68-74 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

For at least the reasons set forth herein, Applicant respectfully submits that Claims 43-74 are not rendered obvious by the proposed combination of *James, Fields, Rhodes, or Smith*. Applicant further respectfully submits that Claims 43-74 are in condition for allowance. Thus, Applicant respectfully requests that the rejection of Applicant's claims under 35 U.S.C. § 103(a) be reconsidered and that Claims 43-74 be allowed.

CONCLUSION:

In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

Although Applicant believes no other fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777**. If an extension of time is necessary for allowing this Response to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777**.

Respectfully submitted,

December 3, 2012

Date

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